H. B. Zachry Company and International Brother-hood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO. Case 11-CA-9923

15 July 1983

DECISION AND ORDER

By Chairman Dotson and Members ZIMMERMAN AND HUNTER

On 30 September 1982 Administrative Law Judge Robert A. Gritta issued the attached Decision in this proceeding. Thereafter, the General Counsel filed an exception and a supporting brief, and Respondent filed a memorandum in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exception and briefs and has decided to affirm the rulings, findings, and conclusions¹ of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge: This case was tried before me on April 13, 1982, in Roxboro, North Carolina, based upon a charge filed by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (herein the Union), on June 5, 1981, and a complaint issued by the Acting Regional Director for Region 11 of the National Labor Relations Board on July 20, 1981. The complaint alleges that the H. B. Zachry Company (herein Respondent) violated Section 8(a)(1) and (3) of the Act by discriminatorily discharging two employees following a work-related incident. Respondent's timely answer denied the commission of any unfair labor practices.

All parties hereto were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by the General Counsel and Respondent. Respondent's brief included an attachment described as a letter to the Regional Office during the investigation of the instant charge. The General Counsel filed a motion to strike from Respondent's brief the attached letter. Respondent filed a two part memorandum: Part I an opposition to the General Counsel's motion to strike and Part II a memorandum in reply to the General Counsel's posttrial brief. Respondent's stated purpose for the attached letter to its post-trial brief was to support an attack upon the Regional Offices procedures during investigation of the underlying charge. In addition to the arguments of the General Counsel in its motion to strike I find that the proffered letter is not material to any complaint allegations nor is it relevant to any fact to be proved in support of the issues raised by the complaint. Accordingly, I grant the General Counsel's motion to strike the attachment to Respondent's post-trial brief. Further, Respondent's memorandum in reply (Part II) is not in accordance with the Board's published Rules and Regulations and therefore will not be considered. Otherwise, both the General Counsel's and Respondent's post-trial briefs have been duly considered.

Upon the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following:

FINDINGS OF FACT

I. JURISDICTION AND STATUS OF LABOR ORGANIZATION—PRELIMINARY CONCLUSIONS OF

The complaint alleges, Respondent admits, and I find that H. B. Zachry Company is a North Carolina corporation engaged in the building and construction industry as a general contractor and with offices and facilities in North Carolina. Jurisdiction is not in issue. H. B. Zachry Company, in the past 12 months, in the course and conduct of its business operations purchased and received at its North Carolina facilities goods and materials valued in excess of \$50,000 directly from points located outside the State of North Carolina. I conclude and find that H. B. Zachry Company is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I conclude and find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ISSUES

- (a) Whether Henry Loftis, Jr., a boilermaker helper, was terminated for union activity?
- (b) Whether Sidney Gravitte, a boilermaker, was terminated for union activity?

¹ In agreeing with the Administrative Law Judge that the complaint should be dismissed here, we rely on his alternative conclusion that, even assuming arguendo that the General Counsel established a prima facie case of discrimination, the discharges involved here did not violate the Act.

¹ All dates herein are in 1981 unless otherwise specified.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

Respondent is constructing a coal-fired electric power plant for Carolina Power & Light Company in Roxboro, North Carolina. Construction began in February 1979. The Union began an organizing campaign in April 1980, focusing upon the boilermaking department, which lasted several months. A number of charges were filed by the Union and complaints issued subsequently setting the various cases for trial. The cases were tried in March, April, and June 1981. Administrative Law Judge Bernard issued his Decision August 14, 1981, and the Board adopted his Decision May 6, 1982.2 The Board found, inter alia, that Respondent harbored animus toward the Union and individual employees engaged in union activity which resulted in unlawful discharges of said employees. The discharges were preceded by unlawful surveillance and threats directed at employees engaging in union activities.

During the course of Administrative Law Judge Bernard's trial several employees, not involved in his case, were participants in a work-related incident. The incident resulted in the discharge of Henry Loftis, Jr., and Sidney Gravitte. It is those two discharges, standing alone, which are the subject of the instant case.

B. The Discharges

Henry Loftis, Jr., testified that he was employed by Respondent at the Roxboro jobsite in August 1980 as a boilermaker helper. Initially, Billy Williamson was his foreman but later Alfred Beasley became foreman. Loftis, during the course of his employment, signed two union cards, one in October 1980 at a private residence of a union official and the other in April 1981 during lunchtime on the job. While employed at Zachry Loftis married the daughter of the union business agent. A wedding announcement appeared in the Roxboro newspaper, dated November 13, 1980, but no supervisor ever mentioned the announcement or acknowledged the marriage to the union official's daughter. Loftis stated that he was not treated differently by supervisors after his marriage as compared with treatment before his marriage. Loftis recalled two occasions when he discussed the Union with supervisors:

. . . one was with Billy Williamson and it was at the tool room at the top of the boiler. I was talking to him about getting a raise. I wanted to get a raise and he kept putting me off and so I finally got, just told him, I said, "all my father-in-law does is to find boilermakers jobs and here I am working for Zachry for little or nothing" and then as I turned to walk out of the tool room, another foreman was standing there, Dick Johnson, and he told me he knew who Robert Shackleford was, and that was the end of that conversation and then another time. I was talking to Alfred Beasley and I told him that I was in favor of the union and that I thought that I

would be a lot better off once I could go to work with the union.

The Williamson conversation occurred in December 1980, when Loftis was eligible for his 3-month raise which he did later receive. The Beasley conversation occurred in February 1981 just before Beasley became foreman.3 Loftis also discussed his family relationship with the union official and the Union in general with his fellow employees but only at times when no supervisor was present. As a general rule, Loftis did not discuss the Union in front of foremen.

Loftis helped boilermaker Bobby Stocks during his entire employment until February 1981. He then began helping Sidney Gravitte. It was his job to get what Stocks or Gravitte needed, cut pipe when needed, and help them fit the joint in preparation for the welder. It was the responsibility of the helper and journeyman to fit the joints and the welder could accept or reject the fit. At the time Loftis began working with Gravitte, the welder was Linwood Brady. The three of them were working low pressure 3-inch soot blower pipes on B-Boiler. On April 22 Brady did not show for work so Johnny Culley was assigned to weld for them. The work went normally until close to lunchtime. A piece of pipe had been cut to fit with the existing pipe previously beveled. Loftis placed the cut pipe on jack stands and Gravitte told him to grind a bevel on the cut pipe. Culley said he could make a good weld without the bevel so Gravitte fitted the joint and Culley began welding. As Culley finished the weld Gravitte was measuring pipe for the next cut while Loftis stood by. At this moment, Ralph Bodine, quality assurance for Carolina Power & Light, saw that the pipe was not beveled on both ends. Bodine asked Culley if he knew that the pipe should be beveled before welding and Culley said, yes, he did. Bodine then looked at Loftis asking the same question. Loftis replied, no, he did not know.4 Bodine stated that all joints must be beveled before welding but told Culley to finish this joint but not to do any more like that. Bodine left and the crew broke for lunch.

After lunch, General Foreman Pack came by to see the joint and told Gravitte that it had to be cut out and redone. Gravitte told Loftis to start building the scaffold so the joint could be worked on. Later Tidwell, Zachry's welding inspector, talked to Culley and viewed the joint. After Tidwell viewed the joint he told Culley that instead of taking the time to cut it out to just let it go but not to do any more like that. The next day about quitting time Loftis was on top to get a tool for Gravitte. 5 Beasley met him and said, "come with me Henry." Loftis suggested Beasley wait because Gravitte needed the tool but Beasley told Loftis to come with him now. Loftis complied and as the two arrived at the work station Beasley said, "We are going to have to let you all go."

² H. B. Zachry Company, 261 NLRB 681.

³ The record shows that Beasley became foreman in 1980 prior to December.

⁴ Loftis did testify that in the 2 months of working the soot blower pipe the incident of April 22 was the only occasion when he did not bevel the pipe prior to fit.

5 Welder Culley worked 1-1/2 days with Gravitte and Loftis then

their regular welder, Brady, returned to work.

Gravitte asked why and Beasley said that it was about the pipe that was not beveled the day before. Beasley took them to the office where each received their final checks.

After walking out Loftis decided to return to the office to get a reason in writing. The secretary told Loftis they did not give termination slips out anymore but he could talk to Moore in the other office. Moore repeated what the secretary had said and declined to issue Loftis any written termination slip.

Sidney Gravitte testified that he worked on the Roxboro job for Zachry from February 1980 till April 1981 as a boilermaker fitter. His supervisor for the first 10 months was Billy Williamson and Albert Beasley replaced him for the last 4 months of Gravitte's employment. Loftis worked as Gravitte's helper during February, March, and April. They were working 4-inch soot blower pipe on B-boiler. The pipe was supplied in 20-foot stalks prebeveled on each end and was cut to needed length on location. After fitting the joints the welder welds it.

On April 22 the regular welder was out so John Culley welded for Gravitte and Loftis. Before lunch they were preparing a section of pipe. Gravitte testified,

And I made a cut on the pipe with the torch, and you know, handling size, and what we needed, and we put it up on the jack stands, and proceeded to fit 90's on the end of it, and we was making this particular fit when the QA Man came by, Ralph Bodine, and Culley was welding it, and I stepped around to take some more measurements, and he come by, and we hadn't bevelled it; and we was going to bevel it and Culley said that he could weld it; and so, I told him that it would be okay with me if he could get it, and so, he was welding it, and we just got about a half of a root pass in it I would say and Bodine come by and he seen it and it wasn't bevelled exactly right, and so, he said, "you-all know that you-all was supposed to bevel it" and they said "yes" and so Culley asked him did he want us to cut it out, and he said "no, go ahead and weld it, that it would be okay but don't let me catch you doing it no more" and so, we went ahead and proceeded to weld it and got it right, hung it in position, and put another piece on the end of it. After lunch that day, I was right on the other side of the boiler, and the General Foreman came by, Marvin Pack, and he said that he had some bad news, he said that we had to cut that bit out and redo it; and so, I said, "do you want me to go back around there and build a scaffold and cut it out, and he said, "well," he said, "there is no need to do all of that, just take the grinder and run it around it a couple of times, and make it look like you have done something to it and let the welder weld another pass over it, and just let it go at that" and so, we went on around there and about that time, when I got around there, John Tidwell walked up; he was the Welding Inspector for Zachry, and Culley went to talk to him, and I wasn't in the conversation; and Culley told him about what had happened, and

about how it was; and he says, "well, just go ahead and let it be, don't say no more about it" and so that we did. We never did do anything to it.

The following day, Well, we went on it and about 10:00 that morning the welder Linwood Brady that we had been having came in. He came in to work, and they sent him on over there to our work area and moved Culley over the way and we went ahead and fitted the pipe that day, and they that evening, 2:00 or 3:00 o'clock, Albert Beasley came down and said that he was going to have to let us go, and I said, "for what?"

He said, "for that bad fit that you made yesterday, I guess." And so, I got my tools out of my little tool box and so, went to the office. The Payroll Secretary, Personnel Secretary, wrote out our checks, and that was it, we went on out.

Gravitte stated that he had previously in December 1980 prepared a joint for welding without beveling it. At that time the unbeveled joint was questioned but not redone as far as Gravitte knew. Gravitte acknowledged that in the trade pipe joints are always beveled before welding. All joints were beveled on the soot blower pipe for the previous 4 to 5 months. The only joints he knew not to be beveled were his two joints. (December 1980, April 1981.) During Gravitte's 14-months employment he was assigned several helpers and several welders. One welder was reassigned by the foreman because he stood around and talked a lot.

Johnny Culley testified that he was employed as a welder by Zachry on the Roxboro job from August 1980 to July 1981. On the Roxboro job the responsibility for fitted joints was shared by the fitter and the welder. All joints on the Roxboro job were supposed to be beveled before welding. With the one exception of the joint in April when he was working with Gravitte and Loftis all joints he welded were beveled. On that day in April about 11:15 a.m. one side of the pipe was beveled properly and the other side was beveled by the torch as it was cut. Culley proceeded to weld the joint and Ralph Bodine, quality assurance man for Carolina Power & Light, saw the joint not properly beveled. Culley showed Bodine that his weld was penetrating so Bodine said to finish it but not to do any more like that. After lunch, General Foreman Pack came up to look at the joint. "He told us to cut it out and redo it. After Pack left I told Gravitte and Loftis to wait on it until tomorrow and in the meantime maybe Tidwell, the welding inspector, would talk about it. Tidwell did come up that evening and after viewing the location and talking about the weld said to hold off redoing the joint until he and Pack got back to them on it. Neither Tidwell nor Pack did get back so we did not redo the joint." The following day Culley worked with Gravitte and Loftis for a couple of hours and their regular welder came in so Culley went elsewhere to work. Culley later heard that Gravitte and Loftis were terminated for the bad pipe

George Fewox, project manager of the Roxboro job, testified that he has worked for Zachry in such capacity

for 5 years. Although not directly involved in terminations he did not know that Loftis was terminated as a reduction in force whereas Gravitte was terminated as not qualified to continue as a boilermaker fitter because he failed to bevel pipe before welding. This was the second instance that Gravitte was involved in where he failed to bevel the pipe in preparation for welding. The design drawings specifying the bevel for all pipe joints are posted at various locations around the jobsite including the employees pipe shop. All postings are made at the very start of the job. The job had peaked out for boilermakers in April and was winding down. Fewox in such circumstances tells the superintendent and general foreman to cut down so many men and lets them decide which employees to terminate. With regard to Gravitte and Loftis, General Foreman Pack made the decision to terminate them. The reduction in force procedure is a step-by-step procedure. First the least productive employees are terminated and this continues until nothing but good hands remain. When further terminations are called for the selection procedure is seniority on the jobsite until the craft is exhausted. April 1981 was the beginning of the boilermaker craft reductions. The planning stage was in January and February but an excess number of days were lost in January and February so the reduction had to slide into April after the lost days were made

Marvin Pack testified that he is general foreman over boilers A and B. His craft is boilermaker and he reports to the boilermaker superintendent, a Mr. Hanks. The welding and fitter foreman reports to Pack. In addition Ralph Bodine, the quality assurance man for Carolina Power & Light, reports discrepancies to Pack within the same organizational scheme. One such report was made to Pack concerning the unbeveled sootblower joint fitted by Gravitte and Loftis on April 22. Within 30 minutes of receiving Bodine's report Pack confronted Gravitte at the work station on the boiler. Gravitte told Pack that "they were caught making a weld without the ends beveled." Pack saw the joint which was only half welded at the time. Pack asked Gravitte why and Gravitte said he had done it before and he thought that he could get away with it.6 Pack told Gravitte that such joints were not allowed in power plants meaning all pipe had to be beveled in preparation for welding. Pack also talked to Culley but he did not speak with Loftis. Pack told Gravitte it would have to come out. That same day Pack told the welding foreman, Bradley, to see that the joint was ground out and rewelded.

Pack talked with Fitter-Foreman Beasley the following morning about Gravitte's work production and journeyman qualities. Pack and Beasley agreed that Gravitte should be terminated for unsatisfactory work. The two also discussed where Loftis could be placed but no position was available. Since the job had peaked out they decided to terminate Loftis as reduction in force. By noon Pack had written out the termination slips for Gravitte and Loftis and given them to Beasley after lunch. He in-

structed Beasley to turn in the slips and inform Gravitte and Loftis of their terminations.

Pack stated that he did not have any knowledge of Loftis' personal life nor did he know Robert S. Shackleford, Loftis' father-in-law. Pack also stated that he had not seen the wedding announcement in the Roxboro paper and no supervisor had reported any such marriage arrangement to him.⁷ Pack testified that if Loftis had any union activities they were not known to him.

Albert Beasley testified that he became fitter foreman on boiler B in late 1980. His responsibility included all the pipe and tube. Beasley was made aware of the nonbeveled pipe joint by Pack the day of the incident.⁸ Pack decided that Gravitte should be terminated and Beasley agreed. He and Pack discussed Loftis' situation and decided that since the work areas were filled up and some layoffs were taking place Loftis would be laid off as a reduction in force. Beasley had four three-man crews working in his area and no more were needed. The welding foreman always kept extra welders to fill in for no-shows but there were no extra fitters or helpers kept on the payroll. Later Pack gave Beasley the termination slips for both Gravitte and Loftis and told Beasley to get them to the office around 3 p.m. At 3 p.m. Beasley did inform the two that they were being terminated and the three went to the office. Beasley stated that neither Gravitte or Loftis asked any questions about their termination but Gravitte did say that he was expecting it the day before. After Beasley gave the slips to the secretary in the office he went back to the boiler.

Beasley denied talking union with Loftis either before or after he became a foreman. Beasley had heard some months before that Loftis married the daughter of a union man but he did not know who the union man was.

Ralph Bodine testified he is a quality assurance inspector for Carolina Power & Light. When he discovers bad piping or bad welding he contacts Zachry management. In April Bodine walked up to Culley as he was changing his electrode. Culley was welding the root on the backing ring but both sides of the joint were not beveled. Culley expressed surprise that it was not beveled and Bodine told him he could see that when he tacked it. Culley asked what to do about it but Bodine did not have the authority to stop any work so he told Culley he might as well finish it. Bodine then proceeded to the top of the boiler to see Pack. Bodine reported to Pack that he had found a fitter welding joints that had not been beveled. Pack said he would take care of it. Bodine then reported the incident to John Tidwell, Zachry's welding inspector, and Foster Wheeler, the manufacturer's representative. The following day Pack told Bodine that the welds were taken care of.

Analysis and Conclusions

The General Counsel alleges that Respondent was out to get Loftis because of his union activity including his son-in-law relationship with the union official. To imple-

⁶ Pack was aware of the prior instance which occurred in January or February 1981 on the same sootblower system. At the time Gravitte had a different helper and different welder.

 $^{^{7}}$ Foreman Dick Johnson had left Respondent's employ prior to the trial of this cause and his whereabouts were unknown.

⁸ Pack supervised the sootblower pipe work rather than Beasley although Beasley did keep the time of the sootblower crews.

ment its design Respondent seized upon a work infraction involving failure to bevel a pipe joint before welding. Although Loftis was not responsible for the fit of the joint due to his helper status, the journeyman fitter, Gravitte, was responsible and he had associated with Loftis for 2 months. The General Counsel contends that Gravitte's association of 2 months with the son-in-law of the union official was the reason for Gravitte's discharge. With Gravitte discharged the way was open to get rid of Loftis by reduction in force.

Respondent counters that it had no knowledge of Loftis' union activity or his personal relationship with a union official and the reason that Gravitte was discharged and Loftis was terminated was work related.

There is little dispute of the underlying facts but each party has offered separate arguments on reasons for conduct with each finding some support in the vague or disputed facts. The resolution of the case turns on the employer's motivation and the causality test of *Wright Line* applies.⁹

The ultimate consideration has two distinct facets. One, whether protected activities played a role in Respondent's decision to discipline Loftis and Gravitte and two, whether Respondent's asserted business reason for the discipline is sufficiently proven as the cause to override the protected activity of the discriminatees. The General Counsel's proof must establish a prima facie case of discrimination with regard for Respondent's asserted reasons and proffered evidence. That is, the General Counsel's prima facie case must preponderate on the basis of the entire record evidence. If the General Counsel fails to present a prima facie case of discrimination the determination ends there and the complaint is dismissed. For the following reasons I conclude and find that the General Counsel has failed to establish his prima facie case.

The General Counsel must show that Loftis and Gravitte engaged in protected activity and that Respondent had knowledge of such activity. The General Counsel's evidence shows that Loftis signed a union card off the jobsite some 6 months before his termination and by his own admission did not discuss the Union around supervisors. Loftis did testify that he signed a second union card on the jobsite just prior to his termination but his explanation of the circumstances, without more, I find implausible. The record is absolutely silent on any card signing by employees either on or off the jobsite in April and I cannot credit Loftis in this regard, without corroboration. I feel that Loftis contrived the April card signing solely to strengthen his case against Respondent. Loftis also testified that he discussed his family relationship with the Union's business agent on the job in the presence of supervisors. In one such conversation the disclosure alleged by Loftis is tenuous at best, in the other it is clear that Loftis was engaged in conversation with a rank-and-file employee, Beasley, not a supervisor. The ultimate promotion of Beasley to a foreman's position does not sustain the General Counsel's required proof. Contrary to Loftis' stated date of the occurrence, again in proximity to his termination, the record clearly shows

the proffered conversation took place 5 to 6 months before the discipline. I therefore do not credit Loftis' version of the conversation for content or chronology. I find support for this credibility resolution in Beasley's denial of any such conversation before or after he made foreman and his admission that Loftis did say while working that he was engaged to the daughter of a union man. Such a credited disclosure is not only remote but suffers substance to sustain the General Counsel's burden. The General Counsel seeks support for the lack of substance in the prior findings of the Board and Administrative Law Judge Bernard respecting discrimination by Respondent directed at working family members. Not only is this record silent of independent 8(a)(1) violations to identify Loftis or anyone else as the object of Respondent's umbrage but there is no evidence that such conduct continued beyond the initial occurrence.

I further conclude that the General Counsel's reliance upon the prior case to establish the animus against the Union or against Loftis and Gravitte is not sufficient. Animus once engendered does not perpetually sustain itself. There must be some showing that it is "alive and well." In my view the absence of evidence that animus still exists nullifies an inference of discrimination to support the General Counsel's burden. Additionally, Gravitte, who had worked on the jobsite for over a year, did not engage in any protected activity nor is there evidence to suggest that Respondent thought he had. There is evidence that Gravitte attempted to get by with less than his work called for and was caught. Gravitte admittedly did not question his discharge with Beasley and I credit Bealsey's testimony that Gravitte stated he was expecting his discharge the day before. Gravitte had worked the sootblower pipe for 5 months and was well aware of the bevel requirement (not only on this jobsite but in the trade as well) and by his testimony he attempted to bevel the pipe with the torch as he cut the pipe, a practice not accepted in the trade and not in conformity with the known specifications of the job, apparently an attempt to repeat his prior bad joint due to failure to properly bevel. As Bodine stated in April the pipe was not properly beveled. Contrary to the General Counsel's assertions the fitter is responsible for the fit of the joint including the bevel. The General Counsel's attempts to absolve Loftis of any responsibility for the bad joint by showing his ignorance of the bevel requirement, particularly after Loftis has spent 2 two months helping Gravitte on the sootblower pipe, only tends to lend support to Respondent's choice of Loftis to reduce its force of helpers. Such ignorance, feigned or otherwise, clearly shows lack of initiative.

It is abundantly clear from the record evidence that Respondent's action against Gravitte was triggered by Gravitte's machinations in preparing a pipe joint the day before. I do not view Respondent's failure to discipline the welder, Culley, as adverse to Respondent's claim of good cause. The fitter is responsible for the fit. The welder is responsible for his weld. Respondent saw the vice as being in the fit and discharged Gravitte. I note as did Respondent that the April incident was Gravitte's second pipe fit without a bevel.

⁹ Wright Line, 251 NLRB 1083 (1980)

In view of the above I conclude and find that the General Counsel has failed to establish a *prima facie* case of discrimination against Gravitte or Loftis. It follows that Respondent's terminations of Gravitte and Loftis on April 23, 1981, are not violative of the Act.

Assuming, arguendo, that the protected activities of Loftis survives the passage of several months and that Respondent had knowledge of such protected activities, the discharge of Gravitte for good cause left Loftis without a job function, for Loftis can only work with a journeyman fitter as a helper. Thus Respondent either had a position for Loftis to go to or it did not. It is my view that Respondent's choice of Loftis for reduction in force, particularly with his involvement in the bad pipe joint in April, was within its stated policy and for good cause whether Loftis engaged in protected activities, or not.

Further I do not conclude nor find that Respondent's choice of Loftis to head the list of those employees to be terminated as a reduction in force is anything more than coincidental to the peaking of the boilermaking crews and the circumstances in April.

ADDITIONAL CONCLUSIONS OF LAW

- 1. Respondent did not violate Section 8(a)(1) and (3) of the Act by terminating Sidney Gravitte and Henry Loftis on April 23, 1981.
- 2. The General Counsel has failed to sustain his burden of proof for any allegation in the complaint.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER10

The complaint is dismissed in its entirety.

¹⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.